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**MAY 11 1994**

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: MM Docket No. 93-107  
Channel 280A  
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and eleven (11) copies of its "Reply to Opposition of ASF."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By:

  
Stephen F. Yelverton

Enclosure

B:CATON.137

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction  
Permit for a New FM Station,  
Channel 280A, Westerville,  
Ohio

)  
)  
) MM Docket No. 93-107

)  
) File Nos. BPH-911230MA

)  
) through

)  
) BPH-911231MB  
)

To: The Review Board

REPLY TO OPPOSITION OF ASF

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: \_\_\_\_\_

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Telephone: (202) 659-3900

May 11, 1994

B:CATON.137

#### REPLY TO OPPOSITION OF ASF

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.229 (d) and 1.294 (c)(1) of the Commission's Rules, hereby submits this reply to opposition. On April 21, 1994, ORA filed a supplement to a motion to enlarge the issues against ASF Broadcasting Corp. ("ASF"). On May 4, 1994, ASF filed an opposition thereto. In reply to the opposition, ORA submits the following comments.

ASF previously disclosed during discovery in this proceeding that it had received a purported tower site agreement in December 1991 from Mid-Ohio Communications, Inc. A December 1991 letter from Mid-Ohio states in pertinent part that it is "willing to negotiate" and has an "intent to negotiate" with ASF as to use of its transmitting tower and facilities.

In an April 15, 1994, submission, ASF disclosed a letter from Mid-Ohio, dated March 2, 1994. Therein, Mid-Ohio confirmed that its December 1991 letter was only a "willingness to negotiate" as to a "possible" lease of the tower site. Thus, under long-established Commission policy, ASF never had "reasonable assurance" of Mid-Ohio's tower site. Progressive Communications, Inc., 3 FCC Rcd 5758, 5759, para. 9 (Rev. Bd. 1988), "reasonable assurance" of the availability of a tower site requires more than a vague "willingness to deal" on the part of the site owner.

In its opposition, ASF contends that ORA's supplement should be denied because it adds nothing new, or of any substance, which has not already been previously advanced. However, this contention is erroneous. The March 1994 letter from Mid-Ohio confirms that in December 1991 it was only willing to deal with ASF in the future and did not have a firm agreement with it.

This letter is unquestionably new information. It is of decisional significance because it is a candid and unrehearsed characterization by Mid-Ohio of what it understood its relationship with ASF was --- nothing more than a willingness to deal.

WHEREFORE, in view of the foregoing, ORA requests that a tower site qualifications issue be specified against ASF based upon the fact that it never had "reasonable assurance" of a tower site from Mid-Ohio.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

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May 11, 1994

020979.00001 ORA.510

**CERTIFICATE OF SERVICE**

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 11th day of May, 1994, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of ASF" to the following:

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